

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**February 13, 2017**

**To: Subcommittee on Energy Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Modernizing Energy and Electricity Delivery Systems: Challenges and Opportunities to Promote Infrastructure Improvement and Expansion”**

On Wednesday, February 15, 2017 at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy will hold a hearing entitled “Modernizing Energy and Electricity Delivery Systems: Challenges and Opportunities to Promote Infrastructure Improvement and Expansion.” This will be a two panel hearing: Panel 1, which begins after opening statements at 10am, will address electric infrastructure. Panel 2, which begins at 1pm, will address pipeline infrastructure.

**I. QUADRENNIAL ENERGY REVIEW**

On January 19, 2014, President Obama issued a Presidential Memorandum directing the federal government to conduct a Quadrennial Energy Review (QER) and establishing a task force to conduct that review and “submit a Quadrennial Energy Review Report to the President every 4 years...”<sup>1</sup> The Memorandum defined the scope for the initial installment of the QER to be the Nation’s “infrastructure for transmitting, storing and delivering energy” (TS&D).<sup>2</sup>

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<sup>1</sup> The White House, *Presidential Memorandum – Establishing a Quadrennial Energy Review* (Jan. 19, 2014) (online at [www.whitehouse.gov/the-press-office/2014/01/09/presidential-memorandum-establishing-quadrennial-energy-review](http://www.whitehouse.gov/the-press-office/2014/01/09/presidential-memorandum-establishing-quadrennial-energy-review)).

<sup>2</sup> *Id.*

The QER found that TS&D infrastructure is vulnerable to a wide and growing range of natural phenomena and attacks.<sup>3</sup> The chapter specifically identified high-voltage transformers as being a critical vulnerability for the electric grid. With regard to natural gas, the report identified aging pipeline distribution systems as a safety and environmental concern; highlighted important difficulties in recovering from gas (and liquid fuel) supply interruptions; and stressed the growing dependence on natural gas as presenting challenges with regard to the electric grid.<sup>4</sup>

Among other things, the QER recommended establishing a competitive grant program to promote innovative solutions to enhance energy infrastructure resilience, reliability, and security. Grants would go to states to demonstrate innovative approaches to TS&D infrastructure hardening and enhancing resilience and reliability.

With regard to gas pipeline distribution infrastructure, the report called for the establishment of a competitive program to accelerate pipeline replacement and enhance maintenance programs for natural gas distribution systems. The program would provide financial assistance to states to incentivize cost-effective improvements in the safety and environmental performance of natural gas distribution systems, through targeted funding to offset incremental costs to low-income households and funding for enhanced direct inspection and maintenance programs.

## **II. THE FAST ACT & OBAMA ADMINISTRATION PERMITTING REFORMS**

On December 3, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act into law.<sup>5</sup> The FAST Act created the Federal Permitting Improvement Steering Council (the Council) to expedite permitting and environmental review for large infrastructure projects in the energy production, electricity transmission, and pipeline sectors, which are projects requiring investments of more than \$200 million. The Council is composed of Federal agencies that play a role in the permitting process and it is directed to develop a plan to significantly reduce the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment.<sup>6</sup>

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<sup>3</sup> Senate Committee on Energy and Natural Resources, Testimony of Secretary of Energy Ernest J. Moniz, *Hearing on The Administration's Quadrennial Energy Review*, 114th Cong. (Apr. 28, 2015).

<sup>4</sup> U.S. Department of Energy, *Quadrennial Energy Review, Energy Transmission, Storage and Distribution Infrastructure*, at S-11, S-12 (Apr. 2015) (online at [energy.gov/sites/prod/files/2015/05/f22/Summary%205.18.15.pdf](http://energy.gov/sites/prod/files/2015/05/f22/Summary%205.18.15.pdf)).

<sup>5</sup> Fixing America's Surface Transportation Act, Pub. L. No. 114-94.

<sup>6</sup> Federal Infrastructure Permitting Dashboard, *Federal Permitting Improvement Council Agencies* ([www.permits.performance.gov/about/federal-permitting-improvement-council-agencies](http://www.permits.performance.gov/about/federal-permitting-improvement-council-agencies)).

Under the law, the Council must assign a lead agency to cover each project. The lead agency must develop a plan for coordinating public and agency participation in any Federal environmental review and authorization within 60 days of that project's public posting on the Federal Infrastructure Permitting Dashboard website. The FAST Act provisions seek to accomplish streamlining within current law by linking the environmental review with project permitting and establishment of deadlines.

### **III. THE DAKOTA ACCESS PIPELINE**

The Dakota Access Pipeline (DAPL) is a 1,172-mile pipeline system proposed by Dakota Access LLC, a subsidiary of Energy Transfer Partners, to transport crude oil from North Dakota to Illinois.<sup>7</sup> The federal government does not have jurisdiction over the siting of domestic oil pipelines like the DAPL; authorization for the DAPL route must be granted by the individual states through which the system is proposed to cross. As of 2016, Energy Transfer Partners had gained siting approval from utility regulators in the four affected states (North Dakota, South Dakota, Iowa and Illinois). In addition to state siting approval for an overall route, a pipeline developer may be required to obtain federal government approvals for specific parts of a pipeline project from particular federal agencies, including the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service, in accordance with the National Environmental Policy Act (NEPA).<sup>8</sup>

On February 7, 2017, the Deputy Secretary of the Army granted a permit providing a 30-year easement under North Dakota's Lake Oahe, which paves the way for completing construction of the Dakota Access Pipeline.<sup>9</sup> Beginning in 2016, the Standing Rock Sioux Tribe of North Dakota had challenged the pipeline route, arguing that the federal government had not properly complied with federal regulations with regard to the pipeline crossing at Lake Oahe.<sup>10</sup>

On February 13, 2017, US District Judge James Boasberg denied a request by the Cheyenne River Sioux tribe to issue a temporary restraining order to halt construction of the Dakota Access Pipeline, declaring that there was no immediate harm because no oil was yet flowing through the pipeline. The next round of arguments is scheduled for February 27, 2017.

### **IV. FEDERAL GAS PIPELINE PERMITTING**

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<sup>7</sup> Congressional Research Service, *Army Corps Easement Process and Dakota Access Pipeline Easement Status* (Feb. 2017) (CRS IN10644).

<sup>8</sup> Congressional Research Service, *Dakota Access Pipeline: Siting Controversy* (Feb. 2017) (CRS IN10567).

<sup>9</sup> *Trump administration to approve final permit for Dakota Access pipeline*, Washington Post (Feb. 7, 2017).

<sup>10</sup> Congressional Research Service, *Dakota Access Pipeline: Siting Controversy* (Feb. 2017) (CRS IN10567).

Under section 7 of the Natural Gas Act, the Federal Energy Regulatory Commission (FERC) reviews applications for the siting, construction, and operation of interstate natural gas pipelines. A pipeline company cannot construct or operate an interstate natural gas pipeline without a FERC-issued “certificate of public convenience and necessity.”<sup>11</sup> Section 7, under certain circumstances, grants the right of eminent domain to a pipeline company that is issued a certificate of public convenience and necessity by FERC.<sup>12</sup>

The permitting process typically begins with the pre-filing phase, which is intended to expedite the certificate application process by engaging stakeholders prior to the filing of a formal application with FERC.<sup>13</sup> During the application phase, FERC prepares the environmental analysis (either an Environmental Impact Statement or an Environmental Assessment) with the assistance of cooperating agencies that have jurisdiction over aspects of the permitting. FERC also conducts non-environmental review.<sup>14</sup>

Under FERC regulations, federal and state agencies must make final decisions on requests for federal authorizations no later than 90 days after FERC issues its final environmental document, “unless a schedule is otherwise established by federal law.”<sup>15</sup> Applicants have legal recourse to petition the U.S. Court of Appeals for the DC Circuit for agency failures to issue, condition, or deny a permit within the established deadlines.

A number of gas pipeline projects across the United States have engendered opposition from local residents and businesses along and proximate to the proposed routes. For example, in Pennsylvania, FERC has recently given approval to the Atlantic Sunrise Project proposed by Transcontinental Gas Pipe Line Company, LLC. This pipeline will expand on an existing natural gas pipeline system in Pennsylvania, consisting of construction of nearly 200 miles of pipeline and several new compressor stations, meter stations and regulator stations.<sup>16</sup>

## **V. WITNESSES**

The following witnesses have been invited to testify:

### **PANEL 1**

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<sup>11</sup> Natural Gas Act of 1938 § 7; 15 U.S.C. § 717f.

<sup>12</sup> *Id.*

<sup>13</sup> Federal Energy Regulatory Commission, *Pre-Filing Environmental Review Process* (online at [www.ferc.gov/help/processes/flow/lng-1.asp](http://www.ferc.gov/help/processes/flow/lng-1.asp)).

<sup>14</sup> U.S. Government Accountability Office, *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary* (Feb. 15, 2013) (GAO-13-221).

<sup>15</sup> 18 C.F.R. § 157.22.

<sup>16</sup> Federal Energy Regulatory Commission, *Final Environmental Impact Statement – Atlantic Sunrise Project* (Dec. 2016) (CP15-138-000).

**Mr. Ganesh Bell**  
Chief Digital Officer  
GE Power

**Dr. Michael Howard**  
President and CEO  
Electric Power Research Institute

**Lonnie Stephenson**  
International President  
International Brotherhood of Electrical Workers

**Steven G. Hauser**  
CEO  
GridWise Alliance

**PANEL 2**

**Mr. Chad Harrison**  
Councilman at Large  
Standing Rock Sioux Tribe

**Mr. Rex Ferry**  
Owner  
Valley Electrical Consolidated

**Ms. Kim Kann**  
Private Landowner  
Lancaster County, PA

**Mr. Terry O'Sullivan**  
General President  
Laborers International Union of North America

**Joey Mahmoud**  
Project Director  
Dakota Access Pipeline